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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

| | | |
|-----------------------------------|---|----------------------|
| WILLIAM E. DUGAN, <i>et al.</i> , |) | |
| |) | |
| Plaintiffs, |) | CIVIL ACTION |
| |) | |
| vs. |) | NO. 08 C 1207 |
| |) | |
| SC EXCAVATING, INC., |) | JUDGE JAMES B. MORAN |
| an Indiana corporation, |) | |
| |) | |
| Defendant. |) | |

JUDGMENT ORDER

This matter coming on to be heard upon the Motion of Plaintiffs, by their counsel, it appearing to the Court that the Defendant, SC EXCAVATING, INC., an Indiana corporation, having been regularly served with process and having failed to appear, plead or otherwise defend, and default of said Defendant having been taken, the Court, first being fully advised in the premises and upon further evidence submitted herewith, FINDS:

1. It has jurisdiction of the subject matter herein and of the parties hereto.
2. The Defendant is bound by the terms of the collective bargaining agreement or agreements referred to in the Complaint of Plaintiffs.
3. The Defendant is obligated to make contributions to each of the Plaintiff Funds in accordance with collective bargaining agreement.
4. The Defendant is bound by all the terms and conditions set forth in the Agreements and Declarations of Trust governing the Plaintiff Funds.

5. Defendant has submitted monthly contribution reports to the Plaintiffs indicating all employees of the Defendant covered by the collective bargaining agreements referred to in the Complaint and the number of hours worked or paid for pursuant to the terms of the collective bargaining agreement referred to herein, for the months of November 2007 through January 2008.

6. Said monthly contribution reports establish that there is due and owing, for the period in question, to Plaintiffs the amounts set forth below:

| | <u>Contributions</u> |
|---------------------|----------------------|
| Welfare Fund | \$ 7,530.90 |
| Pension Fund | \$10,465.76 |
| Apprenticeship Fund | \$ 1,954.35 |
| Vacation Fund | \$ 3,908.70 |

7. Pursuant to the Trust Agreements, a liquidated damages surcharge has been assessed against the Defendant in the amount of ten (10%) percent of all contributions due and unpaid and all contributions which were paid late, for the months of October 2007 through January 2008, in amounts set forth below:

| | <u>Liquidated Damages</u> |
|---------------------|-------------------------------|
| Welfare Fund | \$2,464.41 |
| Pension Fund | \$2,053.68 |
| Apprenticeship Fund | \$ 284.36 |
| Vacation Fund | \$ 568.71 |

8. Plaintiffs have incurred a fee of \$70.00 as a result of Defendant's submission of fringe benefit contributions by way of checks which were subsequently dishonored by its bank for non-sufficient funds.

9. Plaintiffs are entitled to make an audit of the payroll books and records of Defendant to verify the accuracy of the monthly reports referred to herein and covered by the reports submitted to Plaintiffs, and to determine what additional amounts are due and owing to Plaintiffs.

10. Such audits are to be made and conducted by the accountants of the Plaintiff Funds.

11. Defendant has failed to timely make all contributions required to be made to the Plaintiff Funds, as provided in the Agreements and Declarations of Trust governing the respective Funds, Plaintiffs are entitled to recover:

- (a) the cost of the audit of the payroll books and records of Defendant;
- (b) a sum equal to ten (10%) percent of the amount determined to be due;
- (c) costs and expenses of the Trustees, including their reasonable attorneys' fees.

12. Plaintiffs have incurred costs totaling \$410.00 and reasonable attorneys' fees totaling \$581.25.

13. There is no just cause for delay in the entry of a Judgment Order as to the sum of \$30,292.11 owed to the Plaintiffs from Defendant.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

A. That Defendant make available to the accounting firm of Graff, Ballauer & Blanski, P.C., Accountants for the Plaintiff Funds, within thirty (30) days of the entry of this Order, its payroll books and records covering the period of April 2006 through the present date for which it is found that contributions are required to be made, and that an account be taken as to all employees of the Defendant covered by the collective bargaining agreement referred to in the

Complaint of the Plaintiffs, as to wages received and hours worked, and determination be made of amount due Plaintiffs.

B. That Plaintiffs recover from the Defendant, SC EXCAVATING, INC., an Indiana corporation, the sum of \$23,859.70 for contributions and the additional sum of \$5,371.16 for liquidated damages, or a total sum of \$29,230.86.

C. That Plaintiffs recover from the Defendant, SC EXCAVATING, INC., an Indiana corporation, the sum of \$410.00 for their costs and \$581.25 as and for Plaintiffs' just and reasonable attorneys' fees.

D. That Plaintiffs recover from the Defendant, SC EXCAVATING, INC., an Indiana corporation, the sum of \$70.00, which represents bank fees charged to Plaintiffs by Defendant's submission of checks which were dishonored by its bank for non-sufficient funds.

E. That Plaintiffs recover from the Defendant, SC EXCAVATING, INC., an Indiana corporation, the total sum of **\$30,292.11**.

F. Plaintiffs are awarded execution for the collection of the judgments and costs granted hereunder.

G. The Court hereby retains jurisdiction of this cause and all of the parties hereto for the purpose of enforcing this Order.

ENTER:

James B. Moran
UNITED STATES DISTRICT JUDGE

DATED: April 15, 2008

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CERTIFICATE OF SERVICE

The undersigned, an attorney of record, hereby certifies that she caused a copy of the foregoing document (Judgment Order) to be served upon:

Mr. Bryan Siewin, Registered Agent
SC Excavating, Inc.
622 Versailles Drive
Valparaiso, IN 46383

by U.S. Mail on or before the hour of 5:00 p.m. this 8th day of April 2008.

/s/ Jennifer L. Dunitz-Geiringer

Jennifer L. Dunitz-Geiringer
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